

LIBRARY
SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1902

No. 403

RUDOLPH REIDER, PETITIONER,

vs.

GUY A. THOMPSON, SECRETARY, MISSOURI PACIFIC
RAILROAD COMPANY, DEFENDOR

ON PETITION OF APPLICANT TO THE SUPREME COURT OF
THE DISTRICT OF COLUMBIA FOR THE SEVEN EIGHTH

RECEIVED THE ORIGINAL FILED OCTOBER 11, 1902

RECORDED AND INDEXED OCTOBER 1, 1902

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 403

RUDOLPH REIDER, PETITIONER,

vs.

GUY A. THOMPSON, TRUSTEE, MISSOURI PACIFIC
RAILROAD COMPANY, DEBTOR

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

INDEX

	Original	Print
Proceedings in U. S. C. A., Fifth Circuit	a	1
Caption (omitted in printing)	a	1
Record from U. S. D. C., Eastern Louisiana	1	1
Præcipe for record on appeal	1	1
Complaint	2	2
Exhibit—Railroad bill of lading	5	4
Motion to dismiss	7	5
Stipulation as to certain facts	7	6
Exhibit "A"—Translation of the ocean bill of lading issued by Flota Mercante del Estado	10	7
Order dismissing suit	14	9
Notice of appeal	15	10
Assignment of errors	16	10
Clerk's certificate (omitted in printing)	19	
Minute entry of argument and submission	20	13
Opinion, McCord, J.	21	13
Concurring opinion, Hutcheson, J.	25	16
Dissenting opinion, Sibley, J.	27	17
Judgment	32	21
Petition for rehearing (omitted in printing)	33	
Order denying petition for rehearing	49	24
Clerk's certificate	50	24
Order allowing certiorari	51	25

[fol. a]

[Captions omitted]

[fol. 1]

**IN UNITED STATES DISTRICT COURT, EASTERN
DISTRICT OF LOUISIANA**

PRAECIPE FOR RECORD ON APPEAL—Filed March 11, 1949

To: A. Dallam O'Brien, Esq., Clerk of The District Court
of the United States for the Eastern District of Louisiana:

SIR:

It is hereby agreed between the undersigned parties, and we hereby request, that the record on appeal in the above-entitled case shall include the following:

(1) The complaint.

A. The typed copy of the railroad bill of lading attached hereto, which excludes the contract terms and conditions on the reverse side of said bill of lading, and which is to be substituted in lieu of the photostatic copy of said bill of lading which was originally attached to the complaint and made a part thereof.

(2) The motion to dismiss.

(3) The stipulation of parties.

A. The following parts of the translation of the ocean bill of lading issued by Flota Mercante del Estado, which is attached to said stipulation and made a part thereof:

1. The heading and introductory paragraph on [fol. 2] page 1 of said translation;

2. Pages 10-11 of said translation.

(4) Final decree dismissing the suit.

(5) Notice of Appeal.

2
(6) Assignment of errors.

(7) This praecipe.

Very truly yours, (S.) Malcolm W. Monroe of
Deutsch, Kerrigan & Stiles, Attorneys for Plain-
tiff-Appellant, 1700 Hibernia Building, New Or-
leans, Louisiana; (S.) Elizabeth R. Haak of Mill-
ing, Godechaux, Saal & Saunders, Attorneys for De-
fendants, Whitney Building, New Orleans, Loui-
siana.

New Orleans, Louisiana, March 14th, 1949.

IN UNITED STATES DISTRICT COURT

COMPLAINT—Filed July 19, 1948

To the Honorable, the Judges of the District Court of the
United States in and for the Eastern District of Louisiana,
New Orleans Division:

I

Plaintiff, Rudolf Reider, is a citizen of the State of
[fol. 3] Massachusetts, engaged in the business, among other
things, of importing hides into the United States. Guy A.
Thompson is Trustee in Bankruptcy of the Missouri Pacific
Railroad Company, debtor, a railroad corporation organized
under the laws of the State of Missouri, and maintaining an
office and place of business in the City of New Orleans,
Louisiana, and elsewhere in the State of Louisiana, into and
through which, it operates a line of railroads as a common
carrier of goods for hire in interstate commerce.

II

This action arises under the Carmack Amendment to the
Transportation Act, specifically the Act of June 29, 1906,
C 3591; 34 Statutes 593; 49 U.S.C.A., Section 20(11), a law
of the United States regulating commerce.

III

On or about August 10, 1944, defendant railroad received,
at the port of New Orleans, Louisiana, issuing therefor its

receipt and through bill of lading, copy of which is attached hereto and made part hereof, twenty-one (21) cases, and twelve (12) barrels of skins and wool, all in good order and condition, consigned, in bond, to the Collector of Customs at Boston, Massachusetts, to be carried over defendant's own line as initial carrier, and over the lines of connecting carriers, and delivered to the Collector of Customs in Boston, for the account of plaintiff.

[fol. 4]

IV

On arrival at destination, the shipment was found to be badly damaged by water and was stained and moldy, such damage and injury to said hides being to the extent of two thousand and no/100 (\$2,000.00) dollars.

V

Plaintiff is, and was, at all material times, the lawful holder of the bill lading hereinabove referred to and the owner of the goods involved, and has done and performed all conditions precedent on its part to the bringing of this action.

Wherefore, plaintiff demands judgment:

(1) For the sum of two thousand and no/100 (\$2,000.00) dollars, with interest at the legal rate from August 10, 1944; and for all costs; and

(2) For such other and further relief as equity, law and the nature of the case may require or permit.

(S.) James J. Morrison of Deutsch, Kerrigan & Stiles, Attorneys for Complainant, 1700 Hibernia Building.

Serve: Missouri-Pacific Railroad Co., Guy A. Thompson, Trustee, through its proper officer for service of process.

4
[fol. 5] EXHIBIT ATTACHED TO ORIGINAL COMPLAINT

Guy A. Thompson, Trustee, Missouri Pacific Railroad Co.,
Debtor.

Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

"Rio Parana"

At New Orleans, La., Aug. 10, 1944, from H. P. Lambert Co.,
Inc. X SS

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract), agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by *by* law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns:

(Mail or street address of consignee—For purposes of notification only.)

In bond to Collector of Customs for Consigned to H. P. Lambert Co., Inc., % Manufacturers Whse. Destination Boston, State of Mass., Private Siding County of

Route MP ESTLNKP DTS LGT CV B&M NH DELY.
Delivering Carrier Car Initial CCCSTL
Car. No. 49308.

[fol: 6]

No. Pkgs	Description of Articles, Special Marks, and Exceptions	Weight - (subject to Correction)	Class or Rate	Check Col
1 Cs	Lizard Skins Mkd ERSRL 3097	Gross 71600		
2 Cs	Lizard Skins Mkd ERSRL 3065/98	Tare 47000		
16 Cs	Sheepskins Mkd ERSRL Vs/Ns	Net 24600		
2 Cs	Lizard Skins Mkd ERSRL 3083/84			
12 Bls	Wool Mkd BIR Order 87-8614 pr bale			

IN BOND IT—408/438/436/437/463/Manifest attached to W/B Seals
USC A 146257/65

REF LI-1042, 1209, 1071.

"Under except onto rule 10 load" all consignments together earload rate on
each commodity to apply." Loaded at Seventh St. Wharf.

* If the shipment moves between two ports by a carrier by water, the law
required that the bill of lading shall state whether it is "carrier's or shipper's
weight."

NOTE—Where the rate is dependent on value, shippers are required to state
specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated
by the shipper to be not exceeding.....

per

H. P. Lambert Co Inc, Shipper.

G. W. Dolard, Agent

Per

Per s/E. J. Foster

Permanent Post Office Address of Shipper

[fol: 7]

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT TO DISMISS—Filed June 27, 1947

To the Honorable, the Judges of the District Court of the
United States in and for the Eastern District of Louisiana,
New Orleans Division:

The Defendant moves the Court to dismiss this action
because the complaint fails to state a claim against Defend-
ant upon which relief can be granted.

(S.) M. Truman Woodward, Jr., Attorney for De-
fendant, 1122 Whitney Building, New Orleans 12,
Louisiana.

Of Counsel:

(S.) Milling, Godchaux, Saal & Milling, 1122 Whitney Building, New Orleans 12, Louisiana.

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO CERTAIN FACTS—Filed December 30, 1948

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective attorneys, as follows:

1. The 16 cases of sheepskins, marked "ERSRL Vs/Ns", shown on the bill of lading issued by the Missouri Pacific Railroad, a copy of which is attached to the complaint in the above entitled cause, were carried from the port of Buenos Aires, Argentina, to the port of New Orleans, Louisiana, by the Steamship Rio Parana under the terms [fol. 8] and conditions of Bill of Lading No. 42, issued by Flota Mercante del Estado.

2. The document marked "A" attached hereto and made a part hereof as if set forth in extenso herein is a complete and accurate English translation of said Bill of Lading No. 42, a photostat of the original of which, in Spanish, was previously attached ~~to~~, and filed in the record with counsel for plaintiff's statement of reasons in opposition to the motion to dismiss, and is likewise made a part hereof as if set forth in extenso herein.

3. The various ocean bills of lading covering the shipment from the port of Buenos Aires to the port of New Orleans aboard the said Steamship Rio Parana of the 5 cases of lizard skins marked "ERSRL 3097", "ERSRL 3065, 98", "ERSRL 3083/84", and the 12 barrels of wool marked "BIR Order 87—861=pr. bale", which merchandise is included in the afore-mentioned bill of lading issued by the Missouri Pacific Railroad, can not now be obtained; and whereas it is the information and belief of the undersigned that the provisions, terms and conditions of these ocean bills of lading are the same as Bill of Lading No. 42, with the exception of the description of the merchandise involved in each shipment shown under "details given by shipper", and whereas the damage alleged by plaintiff to

have been sustained to the shipment under the bill of lading [fol. 9] is limited to the 16 cases of sheepskins marked "ERSRL Vs Ns", it is agreed by the undersigned that any questions raised by the defendant's motion to dismiss which necessarily entail consideration, construction and or interpretation of the ocean bills of lading shall be governed by said Bill of Lading No. 42.

Deutsch, Kerrigan & Stiles. - By: (S.) Malcolm W. Monroe, 1700 Hibernia Building, New Orleans, Louisiana, Attorneys for Plaintiff. Milling, Godchaux, Saal & Milling. By: (S.) Elizabeth Ridnour Haak, Whitney Building, New Orleans, Louisiana, Attorneys for Defendant.

New Orleans, Louisiana.
December 29, 1948.

[fol. 10] EXHIBIT "A" TO STIPULATION

Translation of the Ocean Bill of Lading Issued by Flota Mercante del Estado, Attached to Foregoing Stipulation

Argentine Republic, Ministry of Marine

General Administration of the State Merchant Fleet

Buenos Aires

Received by the State Merchant Fleet from the "shipper" whose name will appear hereinafter, goods or packages which are said to contain the goods detailed hereinafter, in apparent good order and condition, except as otherwise indicated in this bill of lading, to be transported subject to all of the conditions thereof, which are set forth hereinafter, and insofar as is not provided hereinafter, to the provisions of the Argentine Commercial Code and Argentine laws, uses and customs, to the port or place of discharge named therein or nearest thereto to which the ship can safely approach, enter and leave, remaining afloat in all states and conditions of the sea and weather, to be there delivered or trans-shipped upon payment of charges due. If the shipment of all or part of the goods cannot be made in the ship mentioned in this bill of lading, for any reason whatsoever, the carrier can send them under the conditions stipulated in this document, in the first ship [fol. 11] which it may have available, whether owned by it.

or at its option, by any other company. It is agreed that the custody and transportation of the goods shall be subject to all the clauses of this bill of lading and in a subsidiary manner insofar as is provided therein, to the provisions of the Argentine Commercial Code and Argentine laws, uses and customs, all of which shall govern the release of any sort whatever between the shipper or consignee and the carrier, captain or ship, in all contingencies, in whatever weather or place they may occur, and also in case of any deviation of the ship or in case of its unseaworthiness.

Bill of Lading No. 42

The Shipper, Ship, Consignee, Destination and Goods which are specified in this bill of lading are the following: Shipper: Emilio Rosler S.R.L. Ship: Rio Parana. Leaving from: (with the right to substitute, transship and other provisions which are expressed above). Port of Shipment: Buenos Aires. Port of Discharge of the Ship: New Orleans, destination of the goods:— (if the goods are to be transshipped out of the port of discharge). Shipper to the Order of: The First National Bank of Boston. Notice of arrival should be addressed to (if consigned to Shipper's Order) Rudolf Reider 39 South Street, Boston Mass., U. S. A.

[fol. 12].

Details given by shipper

Marks and Nos.	Number of Packages	Description of Merchandise	Kilograms		Pounds		Value (de- clared by shipper only for Cus- toms use
			Net	Gross	Net	Gross	
— (Received on Board) —							
ERSRL 3066/68 3073/82 3094/96	16	(Cases of cured Skins) (Dressed sheep-skins)	3715	4664	819	10282	

(Stamped across the face of the bill of lading) "Original."

Freight Paid in Buenos Aires

In case upon arrival at port of destination entry of the goods covered by this bill of lading is not permitted for any reason unrelated to the ship, the captain shall have the right to send them to a fiscal or private depository or on launches, for account and at the risk of the goods, there also being for account of the goods the delays, damages and injuries to the ship which may be caused by this operation. If its discharge be not permitted the Carrier may take it to the port of departure or unload it in any port within or without the territory of the United States, the shipper and/or consignee being liable for the freight corresponding to this new carriage.

"The freight indicated in this bill of lading shall be subject to duty in accordance with conditions which are in force on the date of sailing of the ship."

Total Number of packages: 16.

[fol. 13]

In case of collision of the ship with another, as a result of the negligence of the latter or any other act, omission or negligence of the captain, pilot or crew of the former or employees of the Fleet, the owners of the goods carried under this bill of lading shall indemnify the Fleet for any obligation to the other ships, when such obligation results from losses or damages claimed by the Owners of the merchandise transported under this bill of lading against the other ship and payable by the other ship.

Settlement of Freight:

541 P3 a 22,50 x 40P3 1 \$8 404.31
35% 130.85

U\$8 435.16

401 25 M\$N 1 746.08

Freight Payable At: Buenos Aires

Any merchandise that may be in transit for another point shall be for the exclusive account and at the risk of the same and the responsibility of the ship shall cease upon its discharge with the exceptions provided on this bill of lading.

In Witness whereof, the captain or the agent of the above named ship has signed Three original bills of lading, all covering the same shipment and of the same date, and having complied with one, the others are without force.

Dated at Buenos Aires, on the day of June 1944

General Management of the
State Merchant Fleet
Buenos Aires, Republic of Argentina

Signed by: (signature illegible)
(For the Captain)

.

[fol. 14] IN UNITED STATES DISTRICT COURT

ORDER DISMISSING SUIT—Filed February 2, 1949

Borah, J.:

This matter came on for hearing on January 5th, 1949 on motion of defendant to dismiss for failure to state a claim upon which relief could be granted and was argued by counsel for the respective parties and submitted when the Court took time to consider:

Now, therefore, on due consideration thereof:

It is ordered by the Court that defendant's motion to dismiss for failure to state a claim upon which relief could be granted be, and the same is hereby granted and the suit is hereby dismissed.

See: Roberts Federal Liabilities of Carriers, Volume 1, Section 393;

Texas & New Orleans Railroad Company v. Sabine
Tram Company, 227 U. S. 111, 57 L. Ed. 443;

Railroad Commission of Louisiana v. Texas & Pacific
 Railway Company, 229 U. S. 336, 57 L. Ed. 1215;
 Illinois Central Railroad Company v. DeFuentes, 236
 U. S. 157, L. Ed. 517;
 Western Oil Refining Company v. Lipscomb, 244 U. S.
 346, 61 L. Ed. 1181;
 U. S. v. Erie Railroad Company, 280 U. S. 98, 74 L. Ed.
 187.
 (S.) W.G.B.

[fol. 15] IN UNITED STATES DISTRICT COURT

—NOTICE OF APPEAL—Filed February 23, 1949

Sirs:

Please take notice that Rudolph Reider, plaintiff in the above entitled and numbered cause, hereby appeals to the next United States Circuit Court of Appeals for the Fifth Circuit to be held in the United States Court House (Post Office Building), City of New Orleans, from the final decree of this court, dismissing the captioned suit, entered herein on the 2nd day of February, 1949.

(S.) Malcolm W. Monroe of Deutsch, Kerrigan & Stiles, Attorneys for Plaintiff-Appellant, 1700 Hibernia Building, New Orleans, Louisiana.

New Orleans, Louisiana, 23rd day of February, 1949.

To: A. Dallam O'Brien, Esq., Clerk of Court. Messrs. Milling, Godechaux, Saal and Saunders, Whitney Building, New Orleans, Louisiana, Attorneys for Defendant.

[fol. 16] IN UNITED STATES DISTRICT COURT

—ASSIGNMENT OF ERRORS—Filed March 11, 1949

Plaintiff, Rudolph Reider, hereby assigns error in the decree, order and decision of the District Court in the above entitled and numbered action as follows:

1. The Court erred in holding that the complaint failed to state a claim upon which relief could be granted.

2. The Court erred in holding, in effect, that a shipment which has its origin in a foreign country, is carried by an ocean carrier to a port of the United States, and which is subsequently transported by a rail carrier over its own and connecting lines, under a new, separate and distinct bill of lading issued by such rail carrier, from said port to a point in another state, falls outside the scope of the Carmack Amendment.

3. The Court erred in holding that the terms and provisions of the bills of lading, ocean and rail, are not to be considered in determining the applicability of the Carmack Amendment to the shipment in question.

4. The Court erred, in relying on, and in adopting the determinative test of, cases which were concerned, [fol. 17] not with the applicability of the Carmack Amendment, but merely with the question of whether the particular commerce in each instance was intra-state or interstate or foreign and, thus, within the state or federal domain for the purposes of taxation and/or regulation.

5. The Court erred in not holding that the defendant railroad fell within the test of applicability of the Carmack Amendment as set forth in that statute, i.e., "Any common carrier . . . receiving property for transportation from a point in one State . . . to a point in another State . . .".

6. The Court erred in not holding that any element of a "foreign shipment" which might have been involved in the shipment in question ceased to exist with the termination of the ocean contract of carriage, i.e., at the time of discharge of the cargo at the port of New Orleans.

7. The Court erred in failing to hold that the ocean bill of lading was not a through bill of lading; that it did not provide for rail carriage after discharge from the ocean vessel; and that the subsequent, distinct and separate contract of carriage entered into by the defendant railroad made it an "initial carrier" and, as such, subject to be sued under the Carmack

Amendment for damage which occurred on its line or those of the connecting rail carriers.

8. The Court erred in dismissing the suit.

(S.) Malcolm W. Monroe of Deutsch, Kerrigan & Stiles, Attorneys for Rudolph Reider, Plaintiff Appellant.

New Orleans, Louisiana, March 11th, 1949.

[fol. 19] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 20] That thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of May 31, 1949

No. 12739

RUDOLF REIDER

versus

GUY A. THOMPSON, Trustee, Missouri-Pacific Railroad Company, Debtor

On this day this cause was called and after argument by Malcolm W. Monroe, Esq., for appellant, and Mrs. Lillian Elizabeth Ridnour Haak, and M. Truman Woodward, Jr., Esq., for appellee, was submitted to the Court.

[fol. 21] OPINION OF THE COURT, CONCURRING OPINION OF HUTCHESON, CIRCUIT JUDGE, AND DISSENTING OPINION OF SIBLEY, CIRCUIT JUDGE—Filed July 20, 1949.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 12739

RUDOLF REIDER, Appellant,

versus

GUY A. THOMPSON, Trustee, Missouri-Pacific Railroad Company, Debtor, Appellee

Appeal from the District Court of the United States for the Eastern District of Louisiana

(July 20, 1949)

Before Sibley, Hutcheson, and McCord, Circuit Judges

McCord, Circuit Judge:

Rudolf Reider brought this suit against Guy A. Thompson, as Trustee of the Missouri-Pacific Railroad Company, Debtor, for alleged damage by the carrier to a shipment of

twenty-one cases and twelve barrels of skins and wool owned by appellant, which had been shipped from Buenos [fol. 22] Aires, Argentina to appellant at Boston, Massachusetts, by way of the Port of New Orleans, Louisiana.

The complaint purports to be brought under the Carmack Amendment to the Interstate Commerce Act, and alleges that the carrier received the goods at New Orleans, "consigned, in bond, to the Collector of Customs at Boston, Massachusetts"; that upon arrival at its destination the shipment was damaged by water, stained and moldy, to the extent of \$2,000.00, which amount, plus interest thereon, is sought by this suit.

The defendant filed a motion to dismiss the action which was granted by the trial court, on the ground that the complaint failed to state a claim upon which relief could be granted. This appeal is taken from that ruling.

The controlling questions presented are: (1) whether the Carmack Amendment is applicable to a shipment from a foreign country which is intended for uninterrupted transportation and delivery to a particular destination within the United States, and (2) whether the issuance of a bill of lading by a domestic carrier on such shipment gives the shipper a right to sue that carrier under the Carmack Amendment.

It appears from the bill of lading issued by the respondent carrier that the goods were received at New Orleans on August 10, 1944, from "H. P. Lambert Co., Inc." and the S. S. "Rio Parana", and that they were consigned to H. P. Lambert Co., Inc., (shipper) "c/o Manufacturers Whse Destination Boston State of Mass in Bond to Collector of Customs". By stipulation between counsel for [fol. 23] the respective parties, the ocean bill of lading governing the shipment while on voyage from Buenos Aires, Argentina to New Orleans, Louisiana, is also made a part of the record. It appears therefrom that the goods were originally shipped by "Emilio Rosler S. R. L." on the S. S. "Rio Parana", to the order of "The First National Bank of Boston", notify "Rudolf Reider, 39 South Street, Boston, Mass., U. S. A." The port of shipment is revealed as Buenos Aires and the port of discharge of the ship as New Orleans.

We are of opinion the Carmack Amendment does not extend the liability of domestic carriers to cover shipments

arising in a foreign country, and intended for through transportation to a point within the United States. 49 USCA, Section 20(11); *Alwine v. Pennsylvania R. Co.*, 15 Atlantic 2d 507; Roberts, Federal Liabilities of Carriers, Vol. 1, Sec. 393.

There is persuasive authority from both Federal and state courts to the effect that shipments to and from non-adjacent foreign countries were not intended to be governed by the Carmack Amendment, and that actions to enforce liability against a domestic carrier for such foreign shipments could not be brought thereunder. *Missouri Pacific R. R. Co. v. Porter*, 273 U. S. 341; *A. Russo & Co. v. U. S.*, 40 F. 2d 39; *J. H. Hamlen & Sons Co. v. Illinois Cent. R. Co.*, 212 F. 324; *Best v. Great Northern Ry. Co.*, 150 N. W. 484; *Chicago, M. & St. P. Ry. Co. v. Jewett*, 171 N. W. 757.

The mere issuance of a supplemental bill of lading by a domestic carrier to cover its portion of the transportation [fol. 24] and delivery of a through foreign shipment does not interrupt or affect the continuity and foreign character of the shipment, so as to extend a carrier's liability to such foreign shipment under the Carmack Amendment. *Mexican Light & Power Co. v. Texas Mexican Ry. Co.*, 331 U. S. 731; *A. Russo & Co. v. U. S.*, 40 F. 2d 39. Manifestly, this is true where the carrier's bill of lading shows on its face that it was issued in furtherance of the original foreign shipment, and that no new, separate, or distinct domestic shipment was intended. *A. Russo & Co. v. U. S.*, 40 F. 2d 39; See also, *U. S. v. Erie R. R. Co.*, 280 U. S. 98; *Texas & New Orleans R. R. Co. v. Sabine Tram Co.*, 227 U. S. 111.

The Carmack Amendment was passed to enable a shipper to collect for damages to his shipment against the first of a series of carriers, leaving the initial carrier to his recourse against any intervening carriers which may have caused the damage. It was not intended to apply where, as here, a shipper brings an action not against the initial foreign carrier, but against an intervening domestic carrier, and attempts to hold that carrier responsible for damage that may have been caused by the foreign carrier. In such instance, if the intervening carrier were held liable, he might have no enforceable cause of action for recovery of his damages against the foreign carrier, if the latter were actually responsible. It becomes manifest that the

Carmack Amendment was never designed or intended to hold a domestic carrier liable for damage to a foreign shipment under such circumstances, and it would be unjust to do so.

In this case the bills of lading reveal that a continuous and uninterrupted shipment "in bond" from a foreign [fol. 25] country to a particular destination within the United States was contemplated. Under such circumstances, the language of the court in the case of *Alwine v. Pennsylvania R. Co.*, 15 Atlantic 2d 507, is applicable here:

"Finally, since the law contained in Section 20 is a radical departure from the common law as applied to the liability of carriers for the acts of others, its effect should not be extended beyond the plain meaning of the language employed and its evident purpose.

"All that we have said applies with equal force whether the damages arose on an intermediate line within the United States or outside. It cannot be contended that the Carmack amendment took effect at the boundary between the United States and adjacent foreign territory for the amendment covers the entire movement and to so hold would do violence to the plain language of that amendment."

The judgment is
Affirmed.

Hutcheson, Circuit Judge, Concurring:

Proffered by my brother, McCord, an opinion affirming, and by my brother, Sibley, one reversing the district judge, and told firmly by each to stand up like a man and be counted, I have at long last, but not without some slight misgivings ranged myself with McCord and the district judge and for his affirmance.

[fol. 26] The misgivings I have do not spring from the over-all picture of the case. They spring entirely from the fact, which my brother, Sibley, has artfully pointed out, that if the words he quoted from the invoked section are construed, as he wants them to be, by themselves apart from their context in the section as a whole, as amended, and without regard to its long and informative judicial and legislative history and that of the Federal Bills of Lading Act, 49 USCA, Secs. 81 to 124, it would be difficult to find

fault with his conclusion. "This case falls within these words".

These misgivings, however, entirely disappear when consideration is given to the history of the section and the uniform course of decision¹ as to its non-applicability to shipments originating in foreign countries and the inapplicability of the Federal Bills of Lading Act² to shipments so originating. If, in short, the problem the case poses is examined in its setting as a whole and not narrowly and out of focus as centered in and solved by the selected words, I think it plain that my brother, McCord, has the right of it.

It is true that since this is not, under the Federal Bills of Lading Act, an order bill but a straight bill, and the shipper, as the minority points out, will have to prove that the goods were in good condition when the railroad received them and that the damage sued for occurred afterwards, no great harm will come to the carrier from the suit if, as it claims, [fol. 27] the damage complained of occurred on the ship.

But this is not an answer to the jurisdictional question whether the complaint states a claim under the Carmack Amendment to the Interstate Commerce Act, 49 U. S. C. A. Sec. 20 (11), and that district judge was right in dismissing it.

I concur in the opinion affirming the judgment.

Sibley, Circuit Judge, Dissenting:

The plain, unambiguous words of Section 20(11) of the Interstate Commerce Act, as amended, 49 U. S. C. A. Sec. 20(11) uphold this suit. The applicable words are: "Any common carrier, railroad or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country, shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury

¹ See cases cited in the majority opinion, especially *Alwine v. Pennsylvania R. Co.*, 15 Atl. (2) 507.

² *Chesapeake & Ohio v. St. Natl. Bank*, 133 SW (2) at 516; *Williston on Contracts*, Vol. IV, Sec. 1116.

to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading. . . .” The Missouri-Pacific Railroad Co. is a railroad subject to the Interstate Commerce Act. It received [fol. 28] this property at New Orleans, a point within a State, for transportation to Boston, a point in another State; it issued its receipt or bill of lading as it was bound to do, and incurred liability for any damage to such property caused by it or any other common carrier to which it delivered the property on the way to Boston, the destination named in its bill of lading. H. P. Lambert and Co. Inc. is named as consignor and consignee, but the allegation is that plaintiff was at the time the owner. The necessary implication is that Lambert and Co. Inc., was acting for plaintiff. The case is squarely within the words of the Act. There is no federal case to the contrary.

The goods, it appears from the ship's bill of lading introduced by stipulation, came to New Orleans by the ship Parana from Buenos Aires, Argentina. The ship's bill of lading named Emilio Rosler as shipper, the port of shipment Buenos Aires, the port of discharge New Orleans, and stated the freight was paid at Buenos Aires. The consignee was stated in these words: “Shipped to the order of The First National Bank of Boston: Notice of arrival should be addressed to (if consigned to shipper's order) Rudolf Reider, 39 South Street, Boston, Mass.” The ship issued no through bill of lading to Boston. It agreed only to deliver to the order of the Bank at New Orleans, giving notice of arrival to Reider. There is no privity between the ship and Railroad. Most likely the ship's bill of lading was sent by Rosler to the Bank with a draft on Reider for the purchase money of the hides, and Reider, on being notified of arrival, paid the draft and took up the ship's bill of lading and sent it to Lambert and Co. Inc. at New Orleans, who in Reider's behalf received the goods and arranged to ship them to Boston in bond to the Collector [fol. 29] of Customs there. Reider's allegation that he was owner must be accepted as true on this motion to dismiss, the ship's bill of lading not being irreconcilable therewith. The only point argued about it is that it shows an

intention that the goods should move in uninterrupted transit to Boston as final destination, so that its movement was foreign and not domestic commerce. The cited cases, *Texas and N. O. R. R. Co. vs. Sabine Tram Co.*, 227 U. S. 111; *Louisiana R. R. Commission vs. Texas and Pc. Ry. Co.*, 229 U. S. 336; *Illinois Cent. R. R. Co. vs. Fuentes*, 236 U. S. 157; *Western Oil Ref. Co. vs. Lipscomb*, 244 U. S. 346; *Missouri Pacific R. Co., vs. Porter*, 273 U. S. 341; and *United States vs. Eric Ry. Co.*, 280 U. S. 98, establish that. But that the commerce is foreign as well as interstate merely confirms the exclusive right of Congress to regulate it. No one of these cases construes or applies the regulation made by Section 20(11). *Mexican Light and Power Co. vs. Texas Mexican Ry. Co.*, 331 U. S. 731, applies the section to a through bill of lading from Sharon, Pennsylvania, to Laredo, Texas, "for export into Mexico", issued by Pennsylvania Railroad Co., where the goods were injured in Mexico. The suit was brought against the Texas Mexican Railway Co., the last carrier which handled the shipment in the United States. The latter had issued a new bill of lading at Laredo, without any new consideration, to facilitate carriage across the Mexican border. The court held the shipment originated under Section 20(11), Mexico being an adjacent foreign country. So that the liability for the damage done in Mexico was on the Pennsylvania Railroad Co. as the receiving carrier, and not on Texas Mexican Railway Co., notwithstanding the latter's bill of lading, which was held to be without consideration [fol. 30] and void. That case rules nothing as to a reverse shipment originating in Mexico or any other foreign country for which Texas Mexican Ry. Co. might at Laredo give its bill of lading for transportation to a point in Pennsylvania. The State court cases of *Aldrich vs. Atlantic Coast Line R. Co.*, 89 S. E. 315; *Best vs. Great Northern Ry. Co.*, 150 N. W. 484; and *Chicago, M. and St. P. Ry. Co. vs. Jewett*, 171 N. W. 757, relate to shipments moving out of the United States, and apparently at a time when an adjacent foreign country as destination was not named in the Section. *Alwine vs. Pennsylvania R. Co.*, 15 Atl. (2) 507, was probably correctly decided, for as it insists Sect. 20(11) is not ambiguous and means what it says, and it says nothing about a shipment coming into the United States "on a through bill of lading" (emphasis by the court). *A. Russo*

and Co. vs. United States, 40 Fed. (2) 39, was in admiralty for sea damage, the ship and the Missouri Pacific R. Co., having both issued bills of lading in Italy for transportation into the United States. Section 20(11) is not mentioned. The decision was that the Railroad was acting only as agent in respect of the ocean voyage and was not liable for what happened at sea.

In the present case there is no liability assumed for what happened at sea by this Railroad accepting the property at New Orleans and issuing its bill of lading. The sea voyage was over. Congress has not by Section 20(11) made liability to relate back to cover it. Neither the receiving nor delivering carrier, under Section 20(11), has any concern with that. The damage to the hides may have occurred by the fault of the ship, but the complaint alleges no such, for it alleges that the shipment was received [fol. 31] by the Railroad in good condition and delivered in Boston in bad condition. The plaintiff has the burden of proving good condition at New Orleans, and must lose his case if he cannot prove it. There is no presumption of good condition because the hides are recited to be in casks and cases, contents and condition unknown, and such words relieve from any presumption. 9 Am. Jur. Carriers, §422; *St. Louis and Iron Mountain Ry. Co. vs. Knight*, 122 U. S. 29; and under the Bills of Lading Act, 49 U. S. C. A. Sec. 101. Application of Sec. 20(11) here cannot give rise to the hardship suggested of making the domestic carriers subject to the Act responsible for the fault of an importing foreign vessel.

Section 20(11) does not say "initial carrier", nor does it except goods which may have begun their travel in a foreign country. Its words are "*Any common carrier*" subject to the Interstate Commerce Act "*receiving property for transportation*" as stated shall issue the bill of lading and assume the liability for damage "*caused by it*" or other carriers who transport under that bill of lading. There is no language in the Section, no reason nor authority to the contrary. This case falls within the words Congress used.

[fol. 32]

JUDGMENT

Extract from the Minutes of July 20, 1949.

No. 12739

RUDOLF REIDER

versus

GUY A. THOMPSON, Trustee, Missouri-Pacific Railroad
Company, Debtor

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is, hereby affirmed;

It is further ordered and adjudged that the appellant, Rudolf Reider, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Hutcheson, Circuit Judge concurs."

"Sibley, Circuit Judge dissents."

2

[fols. 33-48] Petition for rehearing covering 16 pages filed August 9, 1949, omitted from this print. It was denied, and nothing more by order of August 22, 1949.

[fol. 49] ORDER DENYING REHEARING

Extract from the Minutes of August 22, 1949.

No. 12739

RUDOLF REIDER

versus

GUY A. THOMPSON, Trustee, Missouri-Pacific Railroad
Company, Debtor

It is ordered by the Court that the petition for rehearing
filed in this cause be, and the same is hereby, denied.

"Sibley, Circuit Judge dissents."

[fol. 50] CLERK'S CERTIFICATE, UNITED STATES OF AMERICA
UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 20 to 49 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 12739 wherein Rudolf Reider is appellant, and Guy A. Thompson, Trustee, Missouri-Pacific Railroad Company, Debtor is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the mimeographed record numbered from 1 to 19 are identical with the mimeographed record upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 15th. day of September, A. D. 1949.

Oakley F. Dodd, Clerk of the United States Court
of Appeals, Fifth Circuit. (Seal.)

[fol. 51] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 5, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.

[Endorsed on Cover:] Enter Eberhard P. Deutsch. File No. 54,152. U. S. Court of Appeals, Fifth Circuit, Term No. 403. Rudolph Reider, Petitioner, vs. Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor. Petition for writ of certiorari and exhibit thereto. Filed October 15, 1949. Term No. 403 O. T. 1949.

(5746)

1-13-30
3-24-34

STIPULATION AND ADDITION TO RECORD

LIBRARY

SUPREME COURT OF THE UNITED STATES SUPREME COURT, U.S.

OCTOBER TERM, 1949

NO. 403

RUDOLPH REIDER, PETITIONER

v.

GUY A. THOMPSON, TRUSTEE, MISSOURI PACIFIC
RAILROAD COMPANY, DEBTOR

It is hereby stipulated and agreed by and between Eberhard Deutsch, counsel for petitioner, Rudolph Reider, and H. Truman Woodward, Jr., counsel for respondent, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, that the first three paragraphs of the exhibit attached to the original complaint, appearing as the first eight lines of page 4 of the transcript of the records herein, should appear as follows, rather than in the form in which the same was printed in said transcript:

"Guy A. Thompson, Trustee, Missouri Pacific Railroad Co., Debtor.

"Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

"At New Orleans, La., Aug. 10, 1944, from H.P. Lambert Co., Inc. X 33 'Rio Perana'"

New Orleans, Louisiana, January 14th, 1950.

Eberhard Deutsch
Counsel for Petitioner

H. Truman Woodward, Jr.
Counsel for Respondent